

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7450

To be argued by
BARRETT G. KREISBERG

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

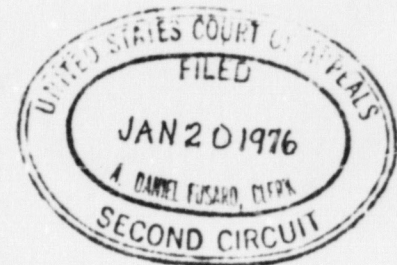
DAILY MIRROR, INC.,

Plaintiff-appellant

vs.

NEW YORK NEWS, INC., HARRY (HENRY) GARFINKLE,
UNION NEWS CO., INC., AMERICAN NEWS CO., INC.,
and ANCORP, INC.

Defendant-appellees.



B
P/S

Appeal from the United States District Court for the
Southern District of New York

BRIEF FOR DEFENDANT-APPELLEE, HENRY GARFINKLE

BARRETT G. KREISBERG
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(5222)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
DAILY MIRROR, INC.,

Plaintiff-Appellant,

-against-

NEW YORK NEWS INC., UNION NEWS CORP.,
HENRY GARFINKLE, AMERICAN NEWS COMPANY,
INC. and ANCORP, INC.,

Defendants-Appellees.
-----x

BRIEF FOR DEFENDANT-APPELLEE
HENRY GARFINKLE

Plaintiff-appellant appeals from an order of Judge Marvin E. Frankel dated June 9, 1975, and a judgment entered thereon, June 11, 1975, in the District Court for the Southern District of New York granting the motion of all defendants for summary judgment dismissing the complaint for alleged violations of the federal and state antitrust laws, as well as the common law of New York. Plaintiff-appellant also appeals from an order of Judge Frankel dated July 3, 1975, and entered July 7, 1975, denying plaintiff's motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure to vacate the order of June 9, 1975 and the judgment entered thereon.

This brief is submitted on behalf of defendant-appellee Henry Garfinkle (Garfinkle) in support of affirmance of the summary judgment granted it by the District Court and of the order of the District Court denying plaintiff's motion to vacate that judgment.

STATEMENT

There are three defendant-appellees in this proceeding. All of them have a common interest and are alleged to be part of a conspiracy. The defendant-appellee, New York News Inc. has submitted a substantial brief on all of the issues on this appeal. A review of that brief has been undertaken by the attorney for Garfinkle and it is felt that the Court should not be further burdened with an additional brief. Therefore, the Court is advised that the defendant-appellee Garfinkle adopts the brief of the New York News Inc. on this appeal and said brief is to be read in support of the defendant-appellee Garfinkle.

It should be pointed out to the Court that Garfinkle served a Notice of Motion and Affidavit in connection with the motion for summary judgment (J A 59) and has joined in all of the other proceedings had in this case.

The decision granting summary judgment should be upheld since the defendant Garfinkle did not participate in any of the alleged actions and there were no violations of any of the antitrust laws as claimed by plaintiff-appellant. In essence, if the Court reads all of the proceedings and the briefs, it will find that the plaintiff-appellant's motion is meritless and that there is no conspiratorial evidence amongst the defendant-appellees.

CONCLUSION

All of the action of the Court below should be affirmed.

Respectfully submitted,

BARRETT G. KREISBERG
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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Jorge A. Gonzalez, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 233 West 15th St.
New York, N.Y.

That on the 14 day of JANUARY, 1976,
deponent personally served the within BRIEF FOR
DEFENDANT-APPELLEE HARRY GARFINKLE
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

~~By leaving _____ true copies of same with a duly
authorized person at their designated office.~~

By depositing 3 true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

1. ROBERT W. FARRELL ESQ.
ATTORNEY FOR PLAINTIFF-APPELLANT
67 PARK AVE., NEW YORK, N.Y. 10016
2. TOWNLEY UPDIKE, CARTER & RODGERS
ATTORNEYS FOR NEW YORK NEWS
220 EAST 42ND ST., NEW YORK, N.Y.
3. SAXE BACON BOLAN & MANLEY
ATTORNEYS FOR ANCORP, INC.
39 EAST 68TH ST. NEW YORK, N.Y.

Sworn to before me this

14th day of January, 1976

Jorge A. Gonzalez

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977